

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DEC 28 2005

JOHN A. SULLIVAN, CLERK
BY: 

DEPUTY CLERK

DAVID PAUL MASSIE,

Petitioner,

v.

UNITED STATES,

Respondent.

Civil Action No. 7:05cv00774

Criminal Action No. 6:94cr70128

MEMORANDUM OPINION

By: Samuel G. Wilson

United States District Judge

Petitioner David Paul Massie brings this motion to correct his sentence pursuant to 28 U.S.C. § 2255 claiming that the Supreme Court's decision in United States v. Booker, 543 U.S. 220; 125 S. Ct. 738 (2005), makes his sentence illegal. However, the Court's decision in Booker is not applicable to cases on collateral review; therefore Massie's claim is not viable. Accordingly, the court dismisses this motion pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings.

I.

Massie challenges his 262 month sentence for conspiracy to possess with intent to distribute cocaine, cocaine base, and marijuana. Massie's conviction became final on July 7, 1997, 90 days after his conviction was affirmed by the Fourth Circuit Court of Appeals.¹ Pursuant to 28 U.S.C. § 2255, a petitioner must file his motion within one-year from the date his conviction became final. See 28 U.S.C. § 2255 ¶ 6(1). Although Massie admits that this petition is filed outside of the one year limitations period, he claims that Booker is a new rule that is retroactively applicable to cases on collateral review and therefore restarts the filing limitation period under 28 U.S.C. § 2255 ¶ 6(3). Although the Court held that its decision in Booker

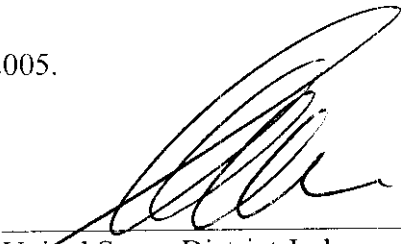
¹ See Sup. Ct. R. 13(a).

applied to the Federal Sentencing Guidelines and cases on direct review, it did not make Booker retroactive to cases on collateral review. Booker, 125 S. Ct. at 769. Therefore, the Court's decision in Booker is not applicable to Massie's motion under § 2255 ¶ 6(3).

II.

For the reasons stated, the court dismisses Massie's § 2255 motion pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings.

ENTER: This 28th day of December, 2005.


United States District Judge